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EXTON, PA 19341

In re Application of :
Timothy Ringeisen :
Serial No.: 10/010,304 : SUSPENSION OF ACTION
Filed: November 8, 2001 :
Attorney Docket No.: KN P-0020 :

This is in reply to the petition under 37 CFR 1.103 to suspend action in this application at applicant's request for a period of four months, filed July 13, 2006. This is also in reply to applicant's petition under 37 CFR 1.181 to compel issuance of the above identified application. Both petitions are properly before the Technology Center Director for Technology Center 1600.

BACKGROUND

On August 10, 2005, Examiner Spear mailed a non-Final Office action to applicants in which claims 1-5, 11-13, 15-17, 25-27 and 29-32 were rejected under 35 U.S.C. 102(b) over either of Reischl et al or Einstman. Claims 6-10, 14, 18-24 and 28 were objected to as dependent from a rejected claim, but otherwise allowable. Examiner Spear retired shortly after issuing the Office action and the application was reassigned to Examiner Silverman.

Applicant replied to the Office action on November 10, 2005, amending claims 6-10, 14, 18-24 and 28 and canceling all other claims. Applicant believed this would place the application in condition for allowance.

On January 13, 2006, Examiner Silverman issued a new Office action rejecting all pending claims over art of record. Claims 8, 10, 23 and 24 were rejected under 35 U.S.C. 102(b) as anticipated by Dunn et al. Claims 6-7, 9 and 18-23 were rejected under 35 U.S.C. 103(a) as obvious over Einstman et al in view of Helmus and Le Noane. Claims 14 and 28 were rejected under 35 U.S.C. 103(a) as obvious over Dunn et al in view of Reischl et al.

On May 18, 2006, applicant replied asking for reconsideration of the examiner's action, but not addressing any of the rejections of record other than to imply that they had previously been withdrawn with respect to the now rejected claims by the previous examiner. A Notice of Non-Compliant amendment was mailed to applicant on June 13, 2006, indicating the amendment was non-responsive for failure to address the rejections of record.

Applicant replied on July 13, 2006, basically repeating the substance of the previous response and filed the two petitions noted above.

DISCUSSION

Applicant appears to be of the opinion that each of these petitions is decided by the Office of Petitions. However, petitions directed to an examiner's action are normally delegated to the Technology Center Director for decision. Thus these two petitions are properly before the Director of Technology Center 1600.

§ 1.103 Suspension of action by the Office.

(a) Suspension for cause. On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph for good and sufficient cause. The Office will not suspend action if a reply by applicant to an Office action is outstanding. Any petition for suspension of action under this paragraph must specify a period of suspension not exceeding six months. Any petition for suspension of action under this paragraph must also include:

- (1) A showing of good and sufficient cause for suspension of action; and
- (2) The fee set forth in § 1.17(h), unless such cause is the fault of the Office.

Applicants give as a reason for requesting suspension that it is needed in order for the Petitions Branch to decide the petition. Such is an improper reason for granting a suspension of action. The mere filing of a petition will not stay the period for applicant's reply nor does it take the place of applicant's reply. In general an Office action will not be issued by an examiner where there is an undecided petition. Thus a petition for suspension of action is unnecessary and, in this instance is moot inasmuch as a decision is being rendered within two months of the petition being filed. The petition to suspend is Denied.

The petition to compel the examiner to issue this application is also improper. Applicant complains that the new examiner did not follow Office guidelines (and did not use the proper Form Paragraphs) in withdrawing the allowance of dependent claims amended to be independent claims and which were indicated as potentially allowable if they included all of the limitations of the claims from which they depended by the previous examiner.

Applicant cites part of M.P.E.P. 706.04 for support which indicates that an examiner newly assigned to an examined application should give full faith and credit to the previous examiner's search and actions and should not initiate a new search in the hope of finding something new. Applicant is correct in this statement. However, an examiner taking up a previously examined application is required to familiarize him/herself with the application and references of record and is required to assess patentability of the claims based thereon. Such assessment extends to claims allowed or indicated allowable by the previous examiner. In this particular application dependent claims were indicated allowable. These claims were then rewritten by applicant as independent claims which were to include all limitations of the claims from which they depended. (An analysis of whether they do or not has not been made.) Having reviewed the specification and claims the examiner updated the search of the previous examiner, as required, and then turned to the prior art of record to determine whether the newly written claims were patentable thereover. The examiner determined they were not and set forth appropriate rejections supported by required reasoning and argument. The rejections set forth were not the same as set forth by Examiner Spear in the previous Office action, however the claims were not the same either. That the examiner failed to use a specific form paragraph indicating withdrawal of the allowance of previously allowed claims is a matter of form, not substance. Contrary to applicant's argument, the omitted paragraph, even if included, would not have required the examiner to utilize new references in drafting the rejections set forth. Applicant argues in the

petition that the only claims now rejected were previously rejected over the references now applied which rejections were earlier overcome and withdrawn by Examiner Spear. Whether this is correct or not, a new examiner assigned to a previously examined application must make his/her own determination of the patentability of the claims in view of the prior art of record. Where that determination differs from the previous examiner's determination consultation with a primary examiner is required. As is noted in this application, the Office action of January 13, 2006, was signed by the examiner of record and a Supervisory Primary Examiner, thus satisfying the requirement applicant notes is forth in the M.P.E.P.

DECISION

In view of the above the petition for suspension of action is **DENIED**.

Further, the petition under 37 CFR 1.181 to compel issuance of this application is also **DENIED**.

It is noted that the reply filed concurrently with this petition still does not address the rejections of record in the Office action of January 13, 2006, and is therefor NON-COMPLIANT. Applicant is given ONE MONTH from the date of mailing of this decision within which to file a compliant reply. NO EXTENSIONS OF TIME UNDER 37 CFR 1.136(a) or (b) WILL BE PERMITTED.

Should there be any questions with respect to this action, please contact the examiner or William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P. O. BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at Office general facsimile number, 571-273-8300.



Bruce M. Kisliuk
Director, Technology Center 1600